

Jones, Jill M.

From: Pedersen, Curt [CPedersen@lacbos.org]
Sent: Wednesday, December 09, 2009 9:31 AM
To: shelvey@cityofwhittier.org
Cc: Avila, Andrea; Stibal, Erin
Subject: Prop A Letter

Steve,
County Counsel has responded there is no language in the proposition, the Grant Agreement, or the Procedural Guide, which contemplates the way excess, non-recreational income is to be handled. Therefore the issues you raise are policy decisions for the Open Space District.

County Counsel also opines that "Funds" are not limited to the initial grant award amount, but could include royalties or non-recreational income. The original amount of the grant need not be used as a cap for non-recreational income to the Open Space District.

Please let me know if you would like to discuss further with County Counsel or the Open Space District.

*Curt Pedersen
Chief of Staff
Los Angeles County Supervisor Don Knabe
(213) 974-1048*

From: shelvey@cityofwhittier.org [<mailto:shelvey@cityofwhittier.org>]
Sent: Monday, November 16, 2009 9:21 PM
To: Pedersen, Curt
Cc: bob@hendersonsinsure.com
Subject: Prop A letter

Curt
thanks again for the information relating to our Proposition A issues and our mineral extraction project. One thing that we're still very uncertain about is the potential position of the County on the required use of the funds generated from the mineral extraction in excess of our current Parks and Recreation operational needs. Under the current thinking are we allowed to accumulate the funds for future Parks and Recreation uses (operating or capital) or is the County suggesting that any money in excess is given to the County? If so, what is the maximum diversion that would be suggested? Would it exceed the \$9mm originally allocated to Whittier for the purchase of the Chevron and Unocal properties?
We appreciate your advice.
Steve

12/7/2010



COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Creating Community Through People, Parks and Programs"

Russ Guiney, Director

January 6, 2010

Mr. Stephen W. Helvey
City Manager
City of Whittier
13230 Penn Street
Whittier, CA 90602-1772

Dear Mr. Helvey:

**CITY OF WHITTIER REQUEST TO USE PROPERTY IN CONJUNCTION
WITH OPEN SPACE AUTHORITY**

The Los Angeles County Regional Park and Open Space District ("Open Space District") is in receipt of a legal opinion ("Opinion") provided by the City of Whittier ("City") regarding the City's obligation to the Open Space District upon the partial disposition of property acquired for open space purposes by the City ("Whittier Hills Property") with funds awarded pursuant to the 1992 Proposition A. It is our understanding that the City has entered into a lease agreement ("Lease") with Matrix Oil ("Matrix") for the purpose of establishing surface oil drilling operations and slant drilling to extract oil from the Whittier Hills Property. The Whittier Hills Property is composed of approximately 1,280 acres of land, which was acquired using Proposition A funds. The language of the Proposition, as well as Grant Agreement No. 58L1-94-0034 ("Grant Agreement") between the Open Space District and the City, set forth the terms under which property acquired with Proposition A funds may be disposed.

We understand that pursuant to the terms of the Lease, Matrix will utilize approximately seven acres of land in the Whittier Hills Property for the surface operations, exclusive of any roads needed for ingress and egress. However, we further understand that the entire 1,280 acres of the Whittier Hills Property are included in the definition of the leased land, and are thus subject to slant drilling for subsurface extraction of oil.

The Opinion, which was forwarded to the Office of the Los Angeles County Counsel ("County Counsel") for review and comment, concludes that the City's obligation to the Open Space District is limited to payment of sufficient funds under current market conditions to replace the seven acres. County Counsel has advised that this conclusion is incorrect, in that it ignores the plain language of the Proposition and the Grant Agreement, both of which require reimbursement of the greater of the actual proceeds or the fair market value of the property. Specifically, section 16(b) of the Proposition provides that: "[i]f the property sold or otherwise disposed of is less than the entire interest in the property originally acquired, developed, improved, rehabilitated or restored with the grant, an amount equal to the proceeds or the fair market value of the property interest sold or otherwise disposed of, whichever is greater, shall be used by the grantee . . . for a purpose authorized in that category or shall be reimbursed to the Parks Fund and be available for appropriation only for a use authorized in that category." (Emphasis added)

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Similarly, section 10 of the Grant Agreement provides: "[i]f the property sold or otherwise disposed of is less than the entire interest in the property originally acquired, developed, improved, rehabilitated or restored with grant monies, then Applicant shall reimburse the District an amount equal to the greater of: 1) an amount equal to the proceeds; or 2) the fair market value." (Emphasis added)

Accordingly, the language of both the Proposition and the Grant Agreement support the conclusion that all proceeds from the Lease must be used for purposes consistent with Proposition A. However, the Open Space District staff believes that there is a legitimate basis on which to distinguish the appropriate uses of the income derived by the City from the surface operations component of the Lease on the one hand, and the subsurface oil extraction (slant drilling) component on the other hand.

Both the Grant Agreement and the 1993 Procedural Guide which was provided to the City at the awarding of the grant, provide that "[i]f the applicant earns gross income from non-recreational uses of an acquisition project (e.g., rental from agricultural, concession leases), the applicant must use such income for recreation development, additional acquisition, operation, or maintenance at the project site, unless the Open Space District approves otherwise." The standard the Open Space District applies in order to determine if a particular lease or rental agreement should be considered a "partial disposition" and be subject to the stricter Proposition language or the more flexible "non-recreational income provision" is whether or not reasonable public access and enjoyment is maintained, in compliance with the intent of the Proposition.

In the case of the Whittier Hills Property, but for the seven acres needed for the surface operation and the necessary roads for ingress and egress, we understand that the impact to the remainder of the approximate 1,273 acres under the Lease will be limited to subsurface extraction of oil and should have minimal impacts on the open space characteristics of the Whittier Hills Property. As a result, public use and enjoyment of the vast majority of the property should be minimally impacted.

Consequently, the Open Space District could label the income derived from the slant drilling component (as opposed to the seven acres used for surface operations) as non-recreational income, allowing the City to use the proceeds for more general park purposes, including both maintenance and operational expenditures. The Open Space District may also, at its discretion, approve the use of this income at sites other than the Whittier Hills Property. While use of the income would still be limited to park purposes, allowing for the funds to be expended at sites other than the Whittier Hills Property would provide the City with greater flexibility.

Provisions would have to be made to deal with any overage (amounts exceeding the sums that the City can feasibly use for park purposes) in proceeds obtained by the City from the slant drilling component of the Lease during any calendar or fiscal year, as well as any other requirements or restrictions the Open Space District deemed necessary so as to ensure the funds are appropriately expended. We must emphasize that the classification of the proceeds from the slant drilling component as non-recreational use income and the City's use of such income for park purposes outside of the boundaries of the Whittier Hills Property will require approval by the Board of Supervisors as the governing board of the Open Space District.

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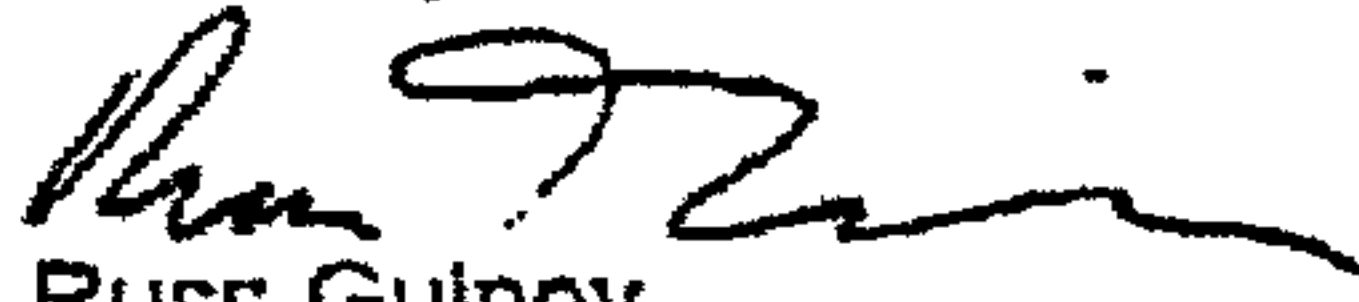
Importantly, the discussion above assumes the impact to Whittier Hills Property, and thus the impact to public use and enjoyment from the slant drilling component, will be minimal and will not adversely affect the open space characteristics of the property. The Open Space District would have to reserve final approval of this approach pending its consideration of the environmental and technical studies (including the environmental impact report) which we understand the City is conducting in connection with the proposed Matrix oil drilling operations.

A separate calculation for the partial disposition of the seven acres actually used for surface operations, as well as any roads impacted by the oil operation, will have to be made given the specific requirements of the Proposition. As far as that acreage is concerned, public use and enjoyment would definitely be impacted. In accordance with Proposition A and the Grant Agreement, the City's obligation to the Open Space District in connection with these seven acres and access roads will be subject to the greater of the actual proceeds or the fair market value test and such income will have to be used for uses authorized by Section 16(b) of the Proposition.

Finally, we note that the Lease provides Matrix with an option to purchase the Whittier Hills Property. Any sale, in whole or in part, of the Whittier Hills Property would trigger the requirement for reimbursement to the Open Space District as required in the Proposition and the Grant Agreement.

Please contact Ilona Volkman at (213) 738-2981 or myself if you have any questions.

Sincerely,



Russ Guiney
Director

RG:KM:bs

Enclosures

c: Curt Pederson, Fourth Supervisorial District
Christina Salseda, County Counsel
Ilona Volkman, Regional Park and Open Space District